

Monday, July 26, 2021

Michael E. Parks
Parks & Parks Attorney at Law
P.O. Box 753
New Roads, Louisiana 70760-0753

**Re: Louisiana Board of Ethics
Docket No. 2021-364**

Dear Mr. Parks:

The Louisiana Board of Ethics ("Board"), at its August 6, 2021 meeting, considered your request for an advisory opinion as to the application of the Louisiana Code of Governmental Ethics ("Code") to various situations concerning the Pointe Coupee Parish Fire Protection District No. 3.

QUESTIONS POSED

You represent the Pointe Coupee Parish Fire Protection District No. 3 ("District") and District Board has asked the following questions.

1. The District has a part-time fire chief, who is engaged to be married to a "work as needed" contract firefighter for the District. Would this be an ethics violation?
2. If the part-time fire chief promotes his fiancé, as well as all other contract firefighters to the rank of Lieutenant, is this an ethics violation?
3. The part-time fire chief appointed an assistant chief. The assistant chief has a brother who has been a contract firefighter for the District for over two (2) years. Is it an ethical violation if the assistant chief were to supervise his brother?
4. The Board did not obtain three (3) bids on a project to build a storage building and only one (1) quote was obtained in the amount of \$28,900.00. When it was brought to the Board's attention, the Board cancelled the project. Is this an ethical violation?

5. If the Board hires a person to pressure wash the buildings belonging to the Fire District for less than \$3,000.00, without obtaining three (3) quotes for the proposed project, is this an ethics violation?
6. If an electrically operated vending machine owned by a volunteer firefighter is placed in a building belonging to the Fire District, is there an ethics violation since the electricity used by the machine is being paid with the Fire District's money?
7. Would it make any difference if the vending machine is mechanically operated and did not use electricity?
8. If the volunteer firefighter was later appointed to the Board, would there be an ethical violation?
9. If a Board member, who is also a dive team member, were to travel out of the state to obtain dive team training at the expense of the Fire District, would this be an ethics violation?
10. If a volunteer firefighter was to travel out of state, on a personal trip, and use diving equipment belonging to the Fire District, would this be an ethical violation?
11. If the Board were to use funds belonging to the Fire District to purchase a plaque to dedicate a flag pole to a current board member, secretary, other officer or current firefighter of the Fire District, would this be an ethical violation?

LAW

La. R.S. 42:1102(3) defines "agency head" to mean the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

La. R.S. 42:1102(13) defines "immediate family" as the term relates to a public servant to mean his children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse.

La. R.S. 42:1111(A) prohibits a public employee from receiving any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position.

La. R.S. 42:1111(C)(2)(b) provides that no public servant and no legal entity in which the public servant exercises control or owns an interest in excess of twenty-five percent, shall receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (b) not within the course of his official duties.

La. R.S. 42:1112(B)(1) states that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest.

La. R.S. 42:1113(A) states no public servant, excluding any legislator and any appointed member of any board of commission and any member of a governing authority of a parish with a population of ten thousand or less, or member of such a public servant's immediate family, or legal entity in which he has a controlling interest shall bid on or enter into any contract, subcontract, or other transaction that is under the supervision or jurisdiction of the agency of such public servant.

La. R.S. 42:1119(A) states that no member of the immediate family of an agency head shall be employed in his agency.

La. R.S. 42:1119(C)(2) provides that the provisions of this Section shall not prohibit the continued employment of any public employee nor shall it be construed to hinder, alter, or in any way affect normal promotional advancements for such public employee where a member of public employee's immediate family becomes the agency head of such public employee's agency, provided that such public employee has been employed in the agency for a period of at least one year prior to the member of the public employee's immediate family becoming the agency head.

CONCLUSION

The Board concluded, and instructed me to inform you, that based on the facts presented, the Code dictates the following answers to your questions:

1. The District has a part-time fire chief, who is engaged to be married to a "work as needed" contract firefighter for the District. Would this be an ethics violation?

No. La. R.S. 42:1119(A) prohibits an immediate family member of an agency head being employed by the agency head's agency. A fiancé is not an immediate family member, as defined by La. R.S. 42:1102(13). La. R.S. 42:1119(A) is not violated by their engagement. Once the part-time fire chief and the contract firefighter are married, the contract firefighter would then be an immediate family member. This would ordinarily constitute a violation of La. R.S. 42:1119(A). However, La. R.S. 42:1119(C)(2) provides an exception to the Nepotism prohibition, if the public employee is with the agency for one (1) year prior to the immediate family member becoming the agency head. If the contract firefighter has been with the District for more than one (1) year, the contract firefighter would meet the exception.

2. If the part-time fire chief promotes his fiancé, as well as all other contract firefighters to the rank of Lieutenant, is this an ethics violation?

No. La. R.S. 42:1112(B)(1) states that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest. Since the contract firefighter is not an immediate family member, La. R.S. 42:1112(B) would not be violated by the promotion of the contract firefighter to Lieutenant. Without additional information, the Board declines to issue an opinion as to all other contract firefighters.

3. The part-time fire chief appointed an assistant chief. The assistant chief has a brother who has been a contract firefighter for the District for over two (2) years. Is it an ethical violation if the assistant chief were to supervise his brother?

No. La. R.S. 42:1119(A) prohibits an immediate family member of an agency head being employed by the agency head's agency. While a brother is an immediate family member, as defined by La. R.S. 42:1102(13), the assistant chief is not the agency head. Therefore, the supervision of the brother contract firefighter by the assistant chief is not a violation La. R.S. 42:1119(A). However, the assistant chief should take care to avoid a potential violation of La. R.S. 42:1112(B)(1). La. R.S. 42:1112(B)(1) states that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest. In the event the assistant chief is responsible for approving leave requests, discipline, pay increases, promotions/demotions, or any activity that can be considered participation, a Disqualification Plan should be submitted to and approved by the Board, pursuant to La. R.S. 42:1112(C) and Chapter 14 of the Rules of the Louisiana Board of Ethics, a copy of which is attached hereto.

4. The Board did not obtain three (3) bids on a project to build a storage building and only one (1) quote was obtained in the amount of \$28,900.00. When it was brought to the Board's attention, the Board cancelled the project. Is this an ethical violation?

No.

5. If the Board hires a person to pressure wash the buildings belonging to the Fire District for less than \$3,000.00, without obtaining three (3) quotes for the proposed project, is this an ethics violation?

No.

6. If an electrically operated vending machine owned by a volunteer firefighter is placed in a building belonging to the Fire District, is there an ethics violation since the electricity used by the machine is being paid with the Fire District's money?

Yes. La. R.S. 42:1113(A) prohibits a public servant from bidding on or entering into or being in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of the agency of such appointed member. An agreement between the volunteer firefighter and the District to allow the placement of a vending machine on District property is considered an oral contract that is violative of La. R.S. 42:1113(A).

7. Would it make any difference if the vending machine is mechanically operated and did not use electricity?

No.

8. If the volunteer firefighter was later appointed to the Board, would there be an ethical violation?

Yes. An agreement between the volunteer firefighter turned District Board member and the District to allow the placement of a vending machine on District property is considered an oral contract that is violative of La. R.S. 42:1113(B), wherein an appointed member of any board is prohibited from bidding on or entering into or being in any way interested in any contract, subcontract, or other transaction which is under the supervision or jurisdiction of his agency.

9. If a Board member, who is also a dive team member, were to travel out of the state to obtain dive team training at the expense of the Fire District, would this be an ethics violation?

No.

10. If a volunteer firefighter was to travel out of state, on a personal trip, and use diving equipment belonging to the Fire District, would this be an ethical violation?

Yes. La. R.S. 42:1111(A) prohibits a public employee from receiving any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of his office or position. The use of District diving equipment on a personal trip is a thing of economic value that La. R.S. 42:1111(A) prohibits the volunteer firefighter from receiving.

11. If the Board were to use funds belonging to the Fire District to purchase a plaque to dedicate a flag pole to a current board member, secretary, other officer, or current firefighter of the Fire District, would this be an ethical violation?

No. La. R.S. 42:1111(A) prohibits a public employee from receiving any thing of economic value, other than compensation and benefits from the governmental entity to which he is duly entitled, for the performance of the duties and responsibilities of

his office or position. A current board member, secretary, other officer, or current firefighter of the District would not be receiving a thing of economic value where the District purchase a plaque to dedicate a flag pole.

This advisory opinion is based solely on the facts as set forth herein. Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Act, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,
LOUISIANA BOARD OF ETHICS

LaToya D. Jordan
For the Board

DISCLAIMER
This is a draft opinion and it is **NOT** an opinion of the Louisiana Board of Ethics. No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which this matter is considered.